

United Brotherhood of Carpenters and Joiners of America, Local No. 13 and First Chicago NBD Corporation and International Brotherhood of Teamsters, Local 705. Case 13-CD-544

May 30, 2000

DECISION AND DETERMINATION OF DISPUTE
BY MEMBERS FOX, HURTGEN, AND BRAME

The charge in this Section 10(k) proceeding was filed on August 4, 1997, by the Employer, First Chicago NBD Corporation, alleging that the Respondent, Carpenters Local 13, violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to the Employer's employees represented by Teamsters Local 705. The hearing was held on August 28 and September 5 and 17, 1997, before Hearing Officer Jessica Willis Muth.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The parties stipulated that First Chicago NBD Corporation is an Illinois corporation engaged in the banking business with a primary place of business at One First National Place, Chicago, Illinois. The parties further stipulated that First Chicago, which has some 180 facilities in Illinois, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. All parties stipulated that Carpenters Local 13 and Teamsters Local 705 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

First Chicago (the Bank) owns numerous banking and office facilities in the Chicago area, including a building at 300 South Riverside Plaza, the site of the instant dispute. The Bank also owns a warehouse where it stores furniture, both new and used. The warehouse has a permanent staff of approximately 20 employees represented by Local 705. The Bank and Local 705 have a long-established collective-bargaining relationship. The Bank owns its own trucking fleet and a wide variety of manual and power moving equipment. All moving equipment is fitted with bumpers and rubber coatings to protect walls and furniture, and is carefully maintained. The Bank uses power equipment to unload wherever possible because it substantially reduces time on the job and risk of injury to employees. The Bank's warehouse staff is fully licensed, trained, and certified by individual manufacturers and by OSHA to transport furniture and handle power equipment.

Prior to September 1996 the Bank's warehouse staff delivered and unloaded all furniture owned by the Bank.

Most of the time, furniture used in the Bank's facilities comes from the central warehouse; however, about 5 percent of the time manufacturers deliver furniture directly to the installation site by common carrier. The Bank typically uses high-end modular furniture that requires skilled installation by carpenters.

In September 1996 the Bank purchased new furniture for the 300 South Riverside location. CBS, the Bank's agent for purchasing and installing furniture, subcontracted the installation work at 300 South Riverside to ISI, an installation company that has a collective-bargaining agreement with Carpenters Local 13. ISI had installed furniture for the Bank before, including in May 1996. On that occasion, the Bank's Teamsters Local 705-represented employees unloaded the trucks, and it was the Bank's intention to have its Teamster-represented employees unload the furniture delivered to the South Riverside location as well. However, just prior to delivery of the September 1996 furniture shipment, Carpenters Local 13 sent a letter to the Bank threatening that "further action" would be taken by the Union if employees represented by the Carpenters were not assigned the unloading work as well as the installation work. To avoid a job action, the Bank's purchasing department instructed ISI to assign the unloading work to its Carpenter-represented employees. Teamster Local 705 then filed a grievance alleging a violation of the subcontracting provision of its collective-bargaining agreement with the Bank. Local 705 withdrew the grievance when the Bank assured the Teamsters that it would not assign unloading work to the Carpenters again.

The incident that led to the charge under consideration here occurred on July 15, 1997, and again involved a dispute over the unloading of furniture that was to be installed pursuant to subcontract with ISI at 300 South Riverside. In its initial request for bids for the installation work, the Bank purchased had erroneously included the work of unloading the furniture as part of the work to be performed. After ISI bid on and was awarded the subcontract, but prior to the date on which the work was to be performed, the Bank purchased notified ISI of the error, deleted the unloading work from the job specifications and, in accordance with its prior grievance settlement with Local 705, assigned the unloading work to its own employees represented by Local 705. Relying on the original bid request, however, ISI brought a work crew of its Local 13-represented employees to the site on July 15 to do the unloading. Local 13's business manager and business representative were also present. When ALTL, a common carrier located in Michigan, arrived at the site with the furniture, which was being delivered directly from a manufacturer in Michigan, Local 13's representatives stated that employees it represented were going to unload the truck and threatened to picket if they were not assigned the work.

On being notified of the situation, Local 705's business agent and the Bank's counsel also arrived at the site. In an effort to resolve the situation, they made various proposals,

including that ALTL deliver the furniture to the Bank's warehouse, where it would be unloaded by the Bank's employees and then reshipped to the site in the Bank's private trucks. Local 13's business representative stated that, in that event, they would follow the truck to the warehouse and picket there.

After discussion failed to resolve which set of employees would unload the furniture, a Carpenter's representative approached the driver of the truck, asked him if he was a union member, and, on being informed that he was not, stated that the Carpenters would like to represent him. When the driver declined to sign an authorization card, the Carpenter-represented employees of ISI began picketing the site wearing vests stating that they were "on strike for a contract" against ALTL. The representative of Local 705 then stated that his members would not unload the truck behind the Carpenters picket line. After about 45 minutes, the ALTL driver announced that he was returning to Michigan with the furniture. To prevent the return of the furniture, the Bank agreed to send its Teamster-represented employees home and to allow the Carpenters to do the unloading. Within minutes, picketing ceased.

B. Work in Dispute

The disputed work involves the unloading of common and/or private carriers transporting furniture owned by First Chicago NBD Corporation at the facility located at 300 South Riverside Plaza, Chicago, Illinois.

C. Contentions of the Parties

The Bank and the Teamsters Local 705 contend that a jurisdictional dispute exists and that the Board should resolve the dispute by awarding the disputed work to First Chicago's employees represented by Local 705. They rely on the collective-bargaining agreement specifically covering the disputed work, employer preference and past practice, relative skills, and economy and efficiency of operations.

Carpenters Local 13 contends that the notice of hearing should be quashed because the dispute is over preservation of Carpenters' work under the installation contract with ISI. In addition, Local 13's claim that unloading furniture that Carpenters will install is Carpenters' work, by area and industry practice. They assert that the only exceptions are when the installation company has a contract with the Teamsters or the furniture is delivered by private carrier.¹ Local 13 characterizes the Bank's bid specification change as a "contract dispute" and contends that by conforming its furniture installation bid with its collective-bargaining agreement, the Bank repudiated a contract with ISI to unload the furniture.

Local 13 denies that it picketed to force an assignment of work, but rather for recognition by ALTL. In the alterna-

tive, it argues that the work should be awarded to employees it represents. In the latter regard, it relies on industry practice, the Bank's past practice, and safety, skill, and efficiency.

D. Applicability of the Statute

Both Teamsters Local 705 and Carpenters Local 13 claim that the unloading work at 300 South Riverside should be assigned to employees that each represents. Carpenters picketed until the work was assigned to ISI employees. Local 705 asserts that the reassignment violated its collective-bargaining agreement. Accordingly, we find that there are active competing claims to the disputed work between rival groups of employees.

We also find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. The evidence does not support Local 13's claim that recognition by ALTL was its objective as its representatives discussed representation with one ALTL driver, but never made a request for recognition to ALTL itself. Rather, Local 13's demand for the identical work in 1996, the statements and actions of its representatives at the site, and the timing of the picketing are all consistent with an intent to force an assignment of work.

Local 13's work preservation defense depends on two assumptions: first, that the Employer's business relations with another employer, ISI, created work preservation rights in employees represented by Local 13; and, second, that the Employer's conduct in the bidding process with ISI precipitated the dispute, with the result that the Employer cannot be neutral and this cannot be a jurisdictional dispute.

Local 13 relies for these propositions on *Longshoremen ILWU Local 62-B v. NLRB*, 781 F.2d 919 (D.C. Cir. 1986), and *USCP-Wesco, Inc. v. NLRB*, 829 F.2d 581 (9th Cir. 1987). These cases are inapposite. In *Longshoremen Local 62-B*, the employer changed its freight and billing operations, resulting in a loss of work for employees who worked for a former subcontractor. In *USCP-Wesco*, the employer subcontracted work to another company in violation of the collective-bargaining agreement, resulting in a loss of work for its own employees. Both situations gave rise to conflicting work claims. In both cases, the court held that the employers, having created the disputes through their own actions, could not invoke procedures intended to protect employers who had had disputes thrust on them, but must use other means, such as arbitration, to resolve conflicting work claims.

In our view, the Employer, in correcting the error in its bid request, honored its work preservation agreement with Local 705, as embodied in the contract's subcontracting prohibition. We reject Local 13's argument equating the Employer's inadvertent error with the purposeful operational changes in *Longshoremen Local 62-B* and *USCP-Wesco*. Under that reasoning, an error would create irrevocable rights in the subcontractor's employees and lock the Employer into a reassignment of work that it did not intend.

¹ The Carpenters argue that these exceptions are memorialized in a 1994 letter from Carpenters' counsel to the Teamsters' counsel. The letter states generally that the parties had agreed that past practices and the traditional work of each trade would be honored. Furniture unloading practices are not referenced.

This would allow Local 13 to achieve indirectly what Section 8(b)(4)(D) prohibits. Accordingly, we find that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred.

The parties stipulated that there is no agreed-upon or approved method for voluntary adjustment of the dispute to which all parties are bound. Accordingly, we find that the dispute is properly before the Board for determination and we deny the Carpenters' motion to quash the notice of hearing.

E. Merits of the Dispute

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of the dispute.

1. Certification and collective-bargaining agreements

All parties stipulated that there is no Board order or certification affecting the dispute. The parties stipulated that the Bank and Teamsters Local 705 have had a collective-bargaining relationship for many years and that the contract was in full force and effect at the time of the dispute. The contract provides that, except in exigent circumstances not relevant here, all delivery and unloading of the Bank's furniture shall be done by members of the bargaining unit. The Bank does not have a collective-bargaining agreement with Carpenters Local 13.

Accordingly, this factor favors awarding the work to the Employer's employees represented by Local 705.

2. Employer preference and past practice

The Bank typically assigns the work of unloading common carriers to its own employees who are represented by Local 705. Bank witnesses testified that the Bank prefers to use its own employees. The only exceptions are two occasions when the Bank assigned the work to employees represented by the Carpenters' union in response to picketing or threatened picketing by the Carpenters.

This factor favors awarding the work to the Bank's employees represented by Local 705.

3. Area and industry practice

It is not unusual for employees represented by the Carpenters Local 13 to unload furniture that they are going to install. Some evidence was adduced that Local 13-represented employees had unloaded furniture shipped to other area employers. No evidence was presented, however, regarding practices of employers comparable to the Bank, who maintain their own warehouses, warehouse staff, and trucking fleets. The Bank's practice is to assign

the work in dispute to Teamsters Local 705-represented employees. No evidence was presented regarding employees represented by Local 705 working for other employers.

We find that the factor of area or industry practice does not favor either Local 705 or Local 13.

4. Relative skills and training

Employees represented by both the Carpenters Local 13 and by the Teamsters Local 705 possess sufficient skill and training to perform the work in dispute. As part of their apprenticeship program, carpenters learn furniture moving techniques and complete OSHA training courses. Carpenters-represented employees who install furniture are certified by furniture manufacturers and by OSHA. The Bank's Teamsters Local 705-represented employees have the same certifications but, in addition, have specialized training in operating power equipment that promotes efficiency on many jobs. The Carpenters Local 13-represented employees are not trained in operating this equipment, and their OSHA certification does not cover it.

Accordingly, the factor of relative skills and training favors awarding the work to the Bank's employees represented by the Teamsters Local 705.

5. Economy, efficiency, and safety of operations

The Bank's Teamsters Local 705-represented employees perform moving operations 100 percent of their time and have an excellent record. Having worked together for a number of years, the Bank's employees are highly efficient and cost-effective. They have never incurred overtime charges in unloading shipments from manufacturers, have a damage record of less than one-thousandth of 1 percent, and in 20 years have had only one serious injury. In addition, the Bank's Teamsters Local 705-represented employees use the Bank's own state-of-the-art, carefully maintained equipment for protection of furniture, floors, walls, and persons. If Carpenters Local 13-represented employees unloaded the Bank's common carrier deliveries, less well-maintained or rented equipment could be used.

Although Carpenters Local 13-represented employees are capable of performing the work and there is no evidence that they would perform it less safely than the Teamsters, no comparable evidence as to economy and efficiency is in evidence. Accordingly, the factors of economy and efficiency favor awarding the work to the Bank's employees.

Conclusions

After considering all the relevant factors, we conclude that the employees represented by Teamsters Local 705, AFL-CIO are entitled to perform the work in dispute. We reach this conclusion relying on the collective-bargaining agreement, employer preference and practice, relative skills and training, and economy and efficiency of operations.

In making this determination, we are awarding the work to employees represented by Teamsters Local 705, not to that union or its members.

Scope of the Award

The Bank asserts that, due to the history of work disputes between Local 705 and Local 13 arising out of Local 13's assertion that it is entitled to unload furniture delivered by common carrier, the Board should issue a broad award to avoid similar disputes in the future. For the Board to issue a broad, areawide award, there must be evidence that the disputed work has been a continuing source of controversy in the relevant geographic area and that similar disputes are likely to recur. There must also be evidence that demonstrates that the charged party has a proclivity to engage in unlawful conduct to obtain work similar to the disputed work. *Electrical Workers IBEW Local 211 (Sammons Communications)*, 287 NLRB 930, 934 (1987). Although there was some evidence that the two unions had discussed issues relating to common carrier deliveries in the past, this record reveals only two instances where Carpenters Local 13 has attempted to force the reassignment of unloading common carriers from employees represented by Local 705: the incident in September 1996 and the July 1997 incident that gave rise to this charge. Two instances, neither of them in defiance of a Board order, fall short of es-

tablishing a "proclivity." Therefore, we conclude that a broad order is inappropriate and the determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of First Chicago NBD Corporation represented by Teamsters Local 705 are entitled to perform the unloading of common and/or private carriers transporting furniture owned by First Chicago NBD Corporation at the facility located at 300 South Riverside Plaza, Chicago, Illinois.

2. Carpenters Local 13 is not entitled by means proscribed by Section 8(b)(4)(D) of the act to force First Chicago NBD Corporation to assign the disputed work to employees represented by it.

3. Within 14 days from this date, Carpenters Local 13 shall notify the Regional Director for Region 13 in writing whether it will refrain from forcing First Chicago NBD Corporation, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.